

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK BIROSCHAK, et al.,	:	
	:	Civil Action No. C-1-01-0300
Plaintiffs,	:	
	:	Judge Weber
vs.	:	
	:	PLAINTIFFS' MOTION FOR
THE CITY OF HAMILTON, et al.,	:	DEFAULT JUDGMENT
	:	PURSUANT TO FED.R.CIV.P
Defendants.	:	<u>FED.R.CIV.P. 55</u>

Pursuant to Rule 55, Fed. R. Civ. P., Plaintiffs respectfully move that the Court enter a default judgment against Defendants Etchison, Ryan, Stieglmeyer, Fultz, Mann, Curry, and Chenoweth for all matters prayed for in the Amended Complaint and set this matter for further proceedings on the appropriate measure of damages.¹

This Motion is supported by a Memorandum in Support and Declaration of Plaintiff's Counsel Scott T. Greenwood, both of which are being filed contemporaneously with the Court.

Respectfully submitted,

/s/ Scott T. Greenwood
Scott T. Greenwood (0042558)
Trial Attorney for Plaintiffs
1 Liberty House
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¹ Plaintiffs do not so move against the City of Hamilton or Butler County Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2003, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing pleading and the Notice of Electronic Filing has been served by ordinary U.S.mail upon all parties for whom counsel has not yet entered an appearance electronically.

s/ Scott T. Greenwood
Trial Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK BIROSCHAK, et al.,	:	
	:	
Plaintiffs,	:	Civil Action No. C-1-01-0300
	:	
vs.	:	Judge Weber
	:	
	:	MEMORANDUM IN
THE CITY OF HAMILTON, et al.,	:	SUPPORT OF
	:	PLAINTIFFS' MOTION FOR
Defendants.	:	<u>DEFAULT JUDGMENT</u>

Pursuant to Fed. R. Civ. P. 55, Plaintiffs respectfully move this Court for an order entering a default judgment against Defendants Etchison, Ryan, Stiegelmeier, Fultz, Mann, Curry, and Chenoweth. For the reasons set forth herein and in the attached Declaration of Plaintiff's Counsel Scott T. Greenwood, the Court should grant the Motion, and enter judgment against the Defendant.

Plaintiffs filed their original Complaint in this action on May 15, 2001, and their Amended Complaint on December 16, 2002. These Defendants did not serve an answer to the Amended Complaint at that time. After entering an appearance, these Defendants sought and obtained permission to file answers within thirty days after their depositions. Each of these Defendants was deposed by October 15, 2003. Pursuant to Rule 15, Fed. R. Civ. P., Plaintiff filed and served an amended complaint on May 29, 2003 (Doc. 4).

Despite the Court's clear order and the provisions of Rule 15, these Defendants never answered the amended complaint. In relevant part, Rule 15 provides, "A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders."

Defendants did not serve an answer by the date, request an extension of time to do so, or file a motion with the Court to extend their answer date. On the eve of the dispositive motion deadline, these Defendants have never answered or addressed the claims against them. Consequently, these Defendants are in default pursuant to Rule 55, Fed. R. Civ. P.

Accordingly, pursuant to Rule 55, Fed. R. Civ. P., Plaintiffs respectfully request that the Court enter a default judgment against these Defendants for all matters prayed for in the Amended Complaint and set this matter for further proceedings on the appropriate measure of damages.

Respectfully submitted,

/s/ Scott T. Greenwood
Scott T. Greenwood (0042558)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK BIROSCHAK, et al.,	:	
	:	Civil Action No. C-1-01-0300
Plaintiffs,	:	
	:	Judge Weber
vs.	:	
	:	DECLARATION OF
CITY OF HAMILTON, et al.,	:	SCOTT T. GREENWOOD
	:	(IN LIEU OF AFFIDAVIT)
Defendants.	:	PURSUANT TO 28 U.S.C. § 1746

I, SCOTT T. GREENWOOD, declare as follows:

1. I am trial attorney for Mark and Mary Biroshak, Acacia Lipps, and Paige Evans, Plaintiffs in the above-captioned action. This declaration is submitted in support of Plaintiffs' Motion for Default Judgment Pursuant to Rule 55, Fed. R. Civ. P.
2. Plaintiffs filed their original Complaint in this action on May 15, 2001, and their Amended Complaint on December 16, 2002.
3. Despite service of the Complaint and Amended Complaints, Defendants Defendants Etchison, Ryan, Stieglmeyer, Fultz, Mann, Curry, and Chenoweth did not file and serve answers. After entering an appearance, these Defendants sought and obtained the Court's permission to file an answer within thirty days after their depositions.
4. Each of these Defendants was deposed no later than October 15, 2003.
5. These Defendants did not serve an answer by November 15, 2003, request an extension of time to do so, or file a motion with the Court to extend their answer date. Consequently, these Defendants are in default pursuant to Rule 55, Fed. R. Civ. P.
6. Accordingly, pursuant to Rule 55, Fed. R. Civ. P., I respectfully request that the Clerk of this Court enter a default judgment against these Defendants for all

matters prayed for in the Amended Complaint and set this matter for further proceedings on the appropriate amount of damages.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed at CINCINNATI, OHIO, on this the 16th day of December 2003.

/s/ Scott T. Greenwood
Scott T. Greenwood